**Intellectual Property Basics**

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* Patents, copyrights and trademarks. In that order for power in the market.
* Business leadership drives intellectual property protection. They own it.
* IP: IBM 2nd company in one year to make over a billion dollars in licensing revenue.
* Asian nations are rising fast. Innovation as the focal point.
* Patent trolls: [Intellectual Ventures](http://www.intellectualventures.com/) and [Acacia](http://acaciatechnologies.com/) (1.5 billion) companies that hunt the use of a system or product that is being infringed upon.
* IP Litigation is very expensive.
* Internet:
  + Make communication fast.
  + Copyrights are coming back to life
  + Publishing destroys IP rights: redact and protect
  + Infringements are easier to find: Pizza story.
* Patents are a business tool:
  + Is a monopoly on the product
  + Increase product margins
  + Block competitors
  + Generate licensing revenue
  + Increase shareholder value
* Patents prevent others from making, using or creating your product.
* Infringement power is all in **Claims**
  + Keep other people from making the product
  + Patent is the cook book for making the product
  + Everything is protected in a claim.
  + Chair: explained and all its uses is explained in the patent description ending in a claim that it’s owned.
* Product: Chair w/5 legs
  + Our patent has 4 legs, a back and a seat
  + Do they get around the patent? No.
  + Adding another leg doesn’t change the fact that a chair still has 4 legs
  + You can sue for patent infringement because it’s so close to original
  + Adding more stuff does not make it a new patent
  + Less: a stool, has no back. Is not an infringement
  + 3 legs is okay because we didn’t say “1 or more legs”
  + Add armrests is an infringement: chair still retains its basic elements
  + The armrest company **can get a license** to make the chair, they can’t go into production without it
* Owning a patent:
  + Inventor
  + Assignee
  + Business contract with a university to develop a technology, the inventor owns the patent.
* **Prior Art**: get a right to block everyone for using the idea or product for 20 years.
  + - Has to be new and obviously new
    - Binder clip: no.
    - Cactus binky
    - Gun shoots around corners
    - Subway sleeper hat
  + Has it ever been published? If not, they can give you a patent
  + Prior art:
    - Research paper
    - Back of an ice cream cone box.
    - Stand up cones in oven.
    - Dead patent
* Assess patentability
* Invalidate someone else’s patent
  + Hire searchers to find another patent
* Mitigate infringement risks:
  + Research to insure you won’t get sued.
  + **Freedom to operate** search
* Competitive Intelligence
* Find Licensing Targets
  + Get revenue from producers
  + Licensing candidates
  + Trolls
* Average cost for full patent is $5,000 to $20,000
* Anti-patent:
* Defensive publications:
  + IMB 5,100 patents last year. They establish the patent so no one else can or they con collect patent licensing fees.
  + No else can patent because **it establishes prior art**.
  + Kills the patent because it is then out there in the public domain.
  + Once in public domain
  + It’s a publication without a patent.
  + Insures no one else can get a patent.
* Confidentiality Agreements:
  + Promise under a process with consequences for violation.
  + Require trust:
  + Punishes them for disclosure.
* Trade Secret:
  + Very strict requiring a rigorous process for keeping it secret. Which can last for ever versus a patent which lasts only 20 years.
  + Coca Cola: their brand depends on it. Brand depends on it.
  + KFC
  + If it gets out, it’s out.
  + Usually for products that are hard to reverse engineer.
* **Trade Marks**: Anything used in commerce to designate the source or origin of a particular product or service.
  + Words: Apple,
  + Logos
  + Colors: Universities lawsuit: designates that school
  + Sounds: NBC’s chime, MGM lion, Intel,
  + Scents:
  + Coke bottle shape: product configuration
* **Distinctiveness:**
  + **Fanciful**: Eastman likes the sound of the sound produced by ‘K’, made up word Kodak
  + **Arbitrary**: Apple
  + **Suggestive**: Coppertone
  + Descriptive: Open MRI not patentable. Above three yes.
  + Generic: linoleum, valueless now because they built such a product that it became a household name. Becomes a verb, its over: Google, photoshopped, scotch tape.
  + Actual Distinctiveness:
    - Dove soap and Dove ice cream.
* Trademark Registration
  + Constructive use: pizza company example: trade registered in Florida hit Clarence shop.
  + Can sue if used
  + Can last forever, pay maintenance fees.
  + Protects against knock-offs. Infringement of the company. China.
* Likelihood of confusion.
  + Similarity of the marks
  + Are the products so similar to be confused
  + Strength of plaintiffs mark: fanciful, etc.
  + Level of care by customer: nail clippers versus Mercedes.
  + Would plaintiff bridge that gap?
  + Example: “Cigar Aficionado” store in eastern hills mall: named after the magazine? License? Not *very* different things. Gone. He infringed. It would be likely that the magazine would start up stores.
* Copyrights:
  + Written, visual or audio embodiment of an idea: but not the idea itself.
  + Article of a product cannot be copied, but the idea/product can be produced.
  + Software.
  + Keep people from copying my cookbook, not to keep from people from making the recipes.
* **Provisional Patent: danger lies in that the full patent must come from the original document. The date is what’s important. If you add to it, but you lose your earlier date.**

**Scenarios:**

* Swapping out car batteries
* 5 key features of ABC: Automated Battery Change system.

What are the 8-10 things to do on a regular basis to keep from being sued?

* Freedom to operate: patent searching
* Fingerprinting documents to prove when you did them.

Patent Valuation companies: using patents as collateral, valuing trademarks, Internet domains, etc.

**Intellectual Property Breakfast Seminar:  
What every business and technical leader needs…*at SUNY Fredonia Incubator***

**Because…**

Commercialization of the Internet has increased intellectual property opportunities and risks……  
Intellectual Property has emerged as more than just a worldwide business *tool*; it is now a worldwide *weapon* of business…..

**We must all speak the language of Intellectual Property.**

* Intellectual property now touches every part of a business and copyrights have moved back into the mainstream.
* Patents are assets that can build fortunes for some and destroy others.
* Trademarks now spread across the world in seconds, and trademark infringement can be detected in seconds.
* With the Internet and frequent job changes, trade secrets are harder than ever to keep, but with the pace of innovation, they are more valuable.

Our vocabulary is growing everyday with new terms that intersect with intellectual property; terms that all business and technical leaders must understand to be part of the conversation.

To be part of the conversation, we must have a basic knowledge of patents, copyrights, trademarks, trade-secrets, licensing, patent trolls, defensive publishing, and other critical forms and tactics of IP. But, we don’t need to be experts. We simply need understand the basics. We need to know just enough to reduce our risks and see opportunities.

You can begin to speak the language of IP by coming to this session………

**Presenter: *Thomas Colson, Esq*.**

Mr. Colson brings years of experience in engaging and motivating audiences all over the world; corporations, governments, entrepreneurs, and students. Additionally, because of his experiences as an intellectual property lawyer (both in-house counsel and litigation counsel), inventor (five US patents and a children’s book series), and business leader (founder and CEO of Executive IP; and founder and former CEO of IP.com), he brings business and technical professionals three critical views of intellectual property.

Timothy Leyh

Executive Director

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